IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22 .12 .2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.O.P.Nos. 8850, 8863 and 11498 of 2004
and Crl.M.P.Nos. 3050, 3067, 3821 and 3822 of 2004

Shobana Kumari ...Petitioner in all the
Director three Crl.OPs.
Thiruvancore Raja Vaidya Salai (P) Ltd.
31 Karpagambal Nagar
Luz Corner, Mylapore
Chennai 600 004.

..vs..

T.T.Suresh ...Respondent in all the
three Crl.O.Ps.

Petitions filed under Section 482 Cr.P.C. praying for as stated below.

For Petitioner : Mr.V.A.Shanthanam
For Respondent : Mr.P.Tamilmani

O R D E R

The above Criminal Original Petitions have been filed by the petitioner/third accused praying to call for the records relating to C.C.Nos. 12546, 14960, 12042 of 2003 on the file of the II Metropolitan Magistrate, Egmore, Chennai and quash the same as illegal insofar as the petitioner is concerned.

2. Today, when the above Criminal Original Petitions were taken up for consideration in the presence of the learned counsel for the petitioner/third accused, it comes to be seen that the second accused entrusted the production supervisor work of a Tamil Movie, namely "Soori" to the complainant on the basis of consolidated renumeration of Rs.25,000/- per month; that due to differences of opinion between the second accused and the complainant, a release -cum- settlement deed dated 6-4-2003 was entered into between themselves, as per which the second accused confirmed the dues at Rs.13,00,000/- to the complainant; that towards the discharge of the said liability, the second accused has issued post dated cheques in favour of the complainant on various dates for various amounts; that when the complainant presented the cheques bearing Nos.153275, 153274, 153292 for a sum of Rs.50,000/-, Rs.50,000/- and Rs.5,000,00/- respectively dated 28-2-2003, 5-3-2003 and 20-6-2003 respectively for

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collection through his Banker, the same were returned with an endorsement"Payment countermanded by the drawer"; that the complainant issued statutory notice as contemplated under law and on receipt of the said notice, the accused gave evasive reply through his lawyer's notice; that having aggrieved, the complainant gave complaints alleging that the petitioner committed an offence punishable under Section 138 of Negotiable Instruments Act, which were taken cognizance by the Court of II Metropolitan Magistrate, Egmore, Chennai in C.C.Nos. 12546, 14960, 12042 of 2003; that the petitioner/third accused alleging that she was not in charge of or responsible for the conduct of the business or day-to-day affairs of the company and the cheques were not issued with her consent or concurrence and that the proceedings initiated against her is an abuse of process of law would come forward to file the above Criminal Original Petitions seeking the relief extracted supra.

3. Learned counsel appearing for the petitioner would submit that the complainant was appointed by the second accused to supervise the Tamil Film "Soori" on a consolidated remuneration of Rs.25,000/- from the date of appointment till completion of the said film; that for the money and cheques entrusted on various dates by the second accused to the complainant to the tune of Rs.43 lakhs for production expenses, he had not submitted proper accounts with vouchers and hence, the second accused paid the said sum of Rs.25,000/- on 25-2-2003 as agreed and dispensed with his service; that on 25-4-2003 the complainant unauthorisedly entered into the second accused nursing home and under threat and coercion obtained the signature of the second accused in eight post dated cheques to the value of Rs.13 lakhs and also obtained his signature in an Agreement dated 6-4-2003; that the second accused filed a suit in C.S.No. 414 of 2003 on 16-6-2003 on the file of this Court for declaring the said cheques as invalid and unenforceable; that the second accused also filed O.A.No.550 of 2003 for injunction restraining the complainant from presenting the cheques, in which notice was ordered; that inspite of notice having been ordered, the complainant presented the cheques bearing Nos. 153275, 153274, 153292 for a sum of Rs.50,000/-, Rs.50,000/- and Rs.5,000,00/- respectively dated 28-2-2003, 5-3-2003 and 20-6-2003, for realisation.

4. Learned counsel for the petitioner further submits that the complainant filed C.S.No.683 of 2003 on the file of this Court for recovery of the cheque amount of Rs.10,22,250/- and O.A.No.4225 of 2003 for furnishing security for the cheque amount; that as per order dated 8-10-2003 a bank guarantee was furnished by the second accused and the complainant gave an undertaking in O.A.No.550/2003 that he would not present the remaining cheques; that subsequently, the complainant filed complaints under Section 138 of Negotiable Instruments Act

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alleging that the cheque Nos.153275, 153274, 153292 for a sum of Rs.50,000/-, Rs.50,000/- and Rs.5,000,00/- respectively dated 28-2-2003, 5-3-2003 and 20-6-2003 had been returned with an endorsement "payment countermanded by the drawer"; that the cheques returned due to the pendency of the dispute regarding the enforceability of the cheque in C.S.No. 414 of 2003 on the file of this Court; that the second accused issued the cheques of the first accused Company for his individual and personal liability and hence, it should be construed that the cheques were not admittedly issued for discharge in whole or part of any debt or other liability of the company from and out of the account maintained by the company, but by the second accused for discharge of his personal liability which is alleged to have arisen under the release -cum-settlement deed dated 6-4-2003.

5. In support of his contention, the learned counsel for the petitioner would rely upon a decision of the Honourable Apex Court rendered in K.P.G.NAIR Vs. M/s.JINDAL MENTHOL INDIA LIMITED reported in I(2001) BC 243 (SC) wherein it is held thus:

> "...
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> 7. From a perusal of Section 141 it is evident that in a case where a company committed offence under Section 138 then not only the company but also every person who at the time when the offence was committed, was incharge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. It follows that a person other than the company can be proceeded against under those provisions only if that person was incharge of and was responsible to the company for the conduct of its business.
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> 8. It is true, as submitted by Mr.Arora that the words of Section 141(1) need not be incorporated in a complaint as magic words but it cannot also be disputed that substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision (for being proceeded against for an offence which he is alleged to have committed). On the above premise, it is clear that the allegations made in the complaint do not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was incharge of and was responsible to the company for the conduct of its business.
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> 9. In that view of the matter, the High Court has misdirected itself and committed an error in coming to the conclusion that the requirements of Section 141 are prima facie satisfied insofar as the appellant is concerned.

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..."

6. In the decision rendered in KATTA SUJATHA Vs. FERTILIZERS & CHEMICALS TRAVANCORE LIMITED reported in (2002) 7 S.C.C. 655 the Honourable Apex Court has held thus:

"...

5. In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.

6. To the same effect is the decision of this Court in K.P.G.Nair Vs.Jindal Menthol India Limited and Anil Hada Vs.Indian Acrylic Limited. Examined in the light of these decisions and the law enunciated, we find no case as such has been made out for proceeding against the appellant.

..."

7. The next decision cited by the petitioner is the one rendered in MONABEN KETANBHAI SHAH AND ANOTHER Vs. STATE OF GUJARAT AND OTHERS reported in 2004(4)CTC 317 wherein it is held thus:

"...

The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.

8. In K.P.G.Nair Vs.Jindal Menthol India Limited, 2001 (1) SCC 218, this Court held that the substance of allegations read as a whole should answer and fulfill the requirements of the ingredients of Section 141. The criminal complaint was quashed in Katta Sujatha (Smt.) Vs.Fertilizers and Chemicals Travancore Limited & Another, 2002 (7) SCC 655, since in the complaint it was not stated that the accused was in charge of the business and was responsible for the conduct of the business of the firm nor was their any other allegation that she had connived with any other partner in the matter of issue of cheque.

..."

8. Lastly, the learned counsel would reply upon the decision rendered in K.SALGA BEGUM Vs. V.K.SHANTHA reported in

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2001 MWN (Cr.)DCC 33, wherein it is held thus:

> "...
> But, for the bald allegation that the petitioner/ second accused is a Director, there is no averment whether she was in charge of and responsible for the business and the day to day affairs of the company. In the absence of such averment, it cannot be said that criminal liability under Section 138 of the Negotiable Instruments Act would be attracted to the petitioner/second accused. In that view of the matter, I am inclined to allow the Criminal Original Petitions. All the Criminal Original Petitions are allowed."

9. The petitioner relying upon the above decisions and alleging that she was not in charge of nor responsible to the company for the conduct of its business or affairs and the said cheques had not been issued by the company for discharge of its debt or liability and hence would seek to quash the complaint filed against the Company and its Directors.

10. Learned counsel for the respondent would submit that the respondent was entrusted with the production supervisor work of Tamil Movie, namely "Soori" by the second accused on the basis of consolidated renumeration of Rs.25,000/- per month; that due to differences of opinion between the respondent and the second accused, a release -cum- settlement deed dated 6-4-2003 was entered into between themselves as per which, the second accused confirmed the dues at Rs.13,00,000/- to the respondent; that towards the discharge of the liability, the second accused has issued post dated cheques in favour of the respondent on various dates for various amounts; that when the respondent presented the cheques bearing Nos.153275, 153274, 153292 for a sum of Rs.50,000/-, Rs.50,000/- and Rs.5,000,00/- respectively dated 28-2-2003, 5-3-2003 and 20-6-2003 respectively for collection through his Banker, the same were returned with an endorsement"Payment countermanded by the drawer"; that the respondent issued a statutory notice as contemplated under law; that on receipt of the notice by the accused, he gave evasive reply through his lawyer's notice and hence, the complainant gave complaints and the same were taken cognizance by the Court of II Metropolitan Magistrate, Egmore, Chennai in C.C.Nos.12546, 14960, 12042 of 2003; that the respondent alleging that as on the date of filing of the complaints under Section 138 of Negotiable Instruments Act, the accused had not made any payment either in part or full on the dishonoured cheques and hence would seek this Court to dismiss the petitions.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to understand that

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the petitioner is the third accused in C.C.Nos. 12546, 14960 and 12042 of 2002 on the file of the Court of II Metropolitan Magistrate, Egmore, Chennai and the petitioner has come forward seeking in all the above Crl.O.Ps. to quash all the above three cases on such grounds that she was not in charge of or responsible for the conduct of the business or the day-to-day affairs of the Company; that it was the second accused, who gave all the three cheques and it was he, who entrusted the production supervisor work of a Tamil Moovie, namely, "Soori" to the complainant on the basis of a consolidated remuneration of Rs.25,000/- per month and on account of difference of opinion they both fell apart and got separated on a release-cum-settlement deed dated 6-4-2003 duly entered into between them confirming due of a sum of Rs.13,00,000/- to the complainant by the second accused and only towards the discharge of the said liability, the second accused issued post dated cheques in favour of the complainant on various dates for various amounts and making use of some of those cheques, now the complainant has proceeded with against the second accused as well as the petitioner, who is the third accused and in the above transaction the petitioner has absolutely no hand in it and on such grounds would come forward to file the above Criminal Original Petition seeking to quash all the above proceedings.

12. Four judgments would be cited on the part of the petitioner and all the judgments would unequivocally and in a pointed manner lay emphasis to Section 141 of Negotiable Instruments Act, wherein, it is held that in a case, where a Company committed an offence punishable under Section 138 of N.I.Act, every person, who at the time when the offence was committed was in charge of and was responsible to the Company for the conduct of the business of the Company shall be deemed to be guilty of the offence. The petitioner would come forward to allege that she was neither in charge of nor was responsible to the Company for the conduct of the business of the Company and therefore, would seek to quash the proceedings.

13. Agreeing with the legal dictum and the principles laid down by the upper forum of law it has to be mentioned that whether the petitioner, who is figuring as the third accused and one of the Directors of the Company has been either in charge of or responsible to the Company in her capacity as the Director, since being a question of fact, even this fact that she is neither in charge of nor responsible for the affairs of the Company could be decided only on trial and therefore, no hasty decisions could be arrived at, just based on the denial of such a role played by her in the affairs of the Company. This Court cannot act to quash the proceedings initiated by the Court of law under the relevant provisions of the Negotiable Instruments Act and hence, in these circumstances the only course that is left open for this Court is to dismiss the above Criminal Original Petitions and hence, the following order.

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In result,

(i) all the above Criminal Original Petitions do not merit acceptance and the same are liable only to be dismissed and are dismissed as such;

(ii) consequently, connected Crl.M.P.Nos. 3050, 3067, 3821 and 3822 of 2004 are also dismissed.

Immediately after delivery of the above common order, the learned counsel appearing for the petitioner had a request to be made to dispense with the presence of the petitioners before the Court below during the course of trial since the petitioner being an handicapped lady, she may not be able to attend the proceedings of the case and therefore, would seek to the relief extracted supra.

2. In consideration of the facts and circumstances of the case, this Court is of the view that the petitioner being an handicapped lady , the personal appearance of the petitioner before the Court below is dispensed with excepting on occasions such as preliminary questioning, examination of the accused under Section 313 Cr.P.C., at the time of delivery of judgment etc. During which time, the trial Court is at liberty to seek the presence of the petitioner as per the provisions of Section 205 Cr.P.C. The petitioner is permitted to appear before the trial Court through his pleader, as per Section 205 Cr.P.C.

22.12.2004

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The II Metropolitan Magistrate, Egmore, Chennai

2.-do- Through the Chief Metropolitan Magistrate, Egmore, Chennai.

Crl.OP.Nos.8850, 8863 & 11498 of 2004

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